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THE SECRETARY OF STATE FOR THE COLONIES, 1768-1782

A COMPARISON of the list of offices included in a modern British cabinet with a similar list of 1760 shows that the number of secretaries of state has increased from two to five. This growth in numbers, however, has not altered the theory that there is but one secretariat, that new secretarial portfolios are not, in the eyes of the law and the constitution, new, and that each secretary of state has the full power and authority inherent in the secretarial seals and may perform any of the duties of his brother secretaries. This theory may be briefly summarized: although there is but one secretariat, there may be as many secretaries as the business of state demands, each of whom may exercise the full powers of the secretariat. This constitutional fiction has been so consistently adopted in the nineteenth century to meet the exigencies of an expanding government—and possibly to avoid the inconveniences and prohibitions of the Act of Settlement and the Place Acts of Anne—that it may not be amiss to call attention to a series of incidents which, had they attained their purpose, would have stopped this subdivision of the secretariat and thus would have altered the form and appearance of the cabinet. At the same time this brief survey will serve to call attention to an office which has never received sufficient study—the office of secretary of state for the colonies, 1768-1782.

The particular problem with which this paper is concerned may be illustrated by an incident in the debate which foreshadowed the end of the colonial secretaryship. The first clause of Burke's Establishment Bill as presented in the House of Commons in 1780 provided for the abolition of "the office commonly called or known by the name of third secretary of state or secretary of state for the colonies". Governor Pownall suggested that the only description necessary was "third secretary of state", but Lord George Germain, who held the office in question, objected to any qualifying terms, for the reason that he was neither third secretary of state nor secretary of state for the colonies, but "one of his Majesty's principal secretaries of state"¹—a position he had taken in a previous session when he had described himself as "secretary of state at large".² "He wished most sincerely," however, "if the committee should determine to

¹ *Parl. Hist.*, XXI. 193-194.

² *Id.*, XX. 266.

abolish any one of the three offices, that it might be the one he had the honour to fill.”³ This protest availed nothing; the original wording was retained in the final bill, passed in 1782.⁴ The issue is fairly joined: Was the colonial secretary a secretary “at large”; did he have the full power and authority of the secretarial seals; was he of equal rank with the two secretaries on the older foundations?

The establishment of a colonial secretaryship was imminent in the days when Halifax presided at the Board of Trade,⁵ it was advocated by Thomas Pownall in his well-known *Administration of the Colonies*, it was made the condition on which Dartmouth was willing to continue office in 1766, it was contemplated by Pitt in the same year,⁶ and it was finally accomplished as a part of the Grafton-Bedford bargain in January, 1768, when the Earl of Hillsborough, who had twice been president of the Board of Trade, received a commission as one of his Majesty’s principal secretaries of state. This commission was in the same form as the usual secretarial commission, except for the insertion of a preamble which stated, “Whereas the public business of our colonies and plantations increasing, it seemeth expedient to us to appoint one other principal secretary of state besides our two ancient secretaries. . . .”⁷ Was this preamble intended as a limitation on the powers of the new office, or was it simply an explanation of its main interests? No such limitation or explanation was necessary in the commissions of the other secretaries, custom having prescribed their immediate functions without having confined their power to the exercise of those functions: either secretary could, if need were, perform the duties of both. If the new secretary did not have the same right, then he was not, in fact, a real secretary of state. There was no doubt, however, in regard to the purpose of the new department. The colonial business heretofore transacted by the secretary of state for the southern department (Shelburne) was taken over by Hillsborough, while the change in the Board of Trade in July, 1768, by which he became the active head, rather than a formal ex officio member of the Board, and the order to the colonial governors directing them to correspond only with the new secretary and to discontinue the practice of sending duplicates of their letters to the Board,⁸ mark the complete identification of the new department with the colonies.

³ Note 1.

⁴ 22 George III., c. 82.

⁵ Especially in 1757, when Newcastle definitely promised Halifax the seals, but was prevented by Pitt from carrying out his promise.

⁶ Williams, *Earl of Chatham*, II. 214, note.

⁷ Public Record Office, Patent Rolls, 8 George III., pt. 2, memb. 8.

⁸ Public Record Office, C. O. 5: 241, July 4, 1768.

The close connection between the Board of Trade and the secretary of state for the colonies confused the situation for contemporaries and obscures many points of detail for historians. The Board of Trade, founded by royal commission in 1696, had become the medium of communication between the government and the colonies and was the body in England most familiar with all colonial affairs. It had never had executive power, however, and at the time of the establishment of the colonial secretaryship in 1768 it had become "a board of advice and council upon such points only as shall be referred to it";⁹ the correspondence with colonial governors was monopolized by the secretary for the southern department, the governors sending only duplicates to the Board; the nomination of colonial officers—a privilege exercised by Halifax—had been lost in 1761; the power to make reports and representations on its own initiative had been taken away. From August, 1766, to January, 1768, the Board of Trade was in a less commanding position than it had been for many years, and colonial affairs were directly under the authority of the southern secretary. This gave the long-needed unity, but it also put overwhelming power in the hands of one man, who had authority over home affairs, Ireland, and foreign negotiations with the powers of southern Europe. For reasons of policy or politics or jealousy,¹⁰ Grafton, as prime minister, determined to create a separate American department; the Board of Trade simply transferred its business from the southern department to the new colonial department, and made its reports to Hillsborough rather than to Shelburne. Thus far the story is simple; the next step brings in an element of confusion.

The Board of Trade was composed of eight regular members, with the great officers of state as ex officio members. When Hillsborough became secretary of state in January no change was made in the commission of the Board, except that Hillsborough was added as an ex officio member; in July, however, the then president of the Board, Lord Clare, was dropped from the commission, leaving only seven regular members, and Hillsborough was ordered to attend regularly at the meetings of the Board. This was the reversal of the process advocated by Halifax. He wished the presidency of the Board to be raised to a secretaryship; Hillsborough as secretary became, for all practical purposes, the president of the Board. The greater office was not added to the lesser, but the greater absorbed the lesser, which, for a time, entirely disappeared. This chronological sequence of events has been generally overlooked, while William Knox, a keen if

⁹ Public Record Office, C. O. 5: 216, Hillsborough to Shelburne.

¹⁰ Fitzmaurice, *Shelburne*, I. 327 ff.

not unprejudiced observer, is authority for the statement that Hillsborough's colleagues looked upon him simply as first lord of trade (president of the Board) with seals and cabinet¹¹—an opinion that was to make it hard for Hillsborough and his successors to obtain a position equal to that of the other secretaries of state.

This dual position of the secretary makes it sometimes difficult to determine exactly in what capacity he was acting—whether as first lord of trade or as secretary of state. The Journals of the Board record the presence of “one of his Majesty’s principal secretaries of state” immediately below the names of the other members in attendance, thus emphasizing the secretarial character. In 1779 Germain said that he was no more a member of the Board of Trade than the Archbishop of Canterbury, but he gave himself away when he added that he sometimes attended as first lord.¹² A few months later, however, Germain was ready to insist upon his position as first lord in a matter of petty patronage, with the result that the Board recorded a minute that “the presence of the secretary of state for the American department being made indispensable by the terms of his Majesty’s commission . . . the privileges annexed to the first lord of trade for the time being should and ought to devolve upon the secretary of state.”¹³ This particular problem was solved in November, 1779, by a return to the old system of a regularly appointed first lord commissioner of trade and the separation of the Board from the colonial department.¹⁴ According to the king this would place Germain “in every respect on the same line as the two antient Secretaries”,¹⁵ but the king’s idea was to placate Germain for having lost a position at the Board rather than to relieve him of the suspicion of inferiority which that position entailed, or had entailed for his predecessors. Whatever may be our final conclusion in respect of the place of the colonial secretaries in the government, it is certain that they were more than first lords commissioners of trade with seals and seat in cabinet.

The appointment of Hillsborough and the establishment of a colonial department seem to have been opposed in the House of

¹¹ Hist. MSS. Comm., *Various Collections*, VI. 256 (Knox MSS.).

¹² *Parl. Hist.*, XX. 263, 266. Germain here falls into a curious error; he was certainly an ex officio member along with the other great officers of state: they were excused from attendance; he was not. Moreover the archbishop was not even an ex officio member, as was the Bishop of London. His interpretation of “occasionally” is also interesting; Germain missed only 17 out of 179 meetings of the Board in four years.

¹³ Public Record Office, C. O. 391: 86, pp. 139–140.

¹⁴ See the author’s note, “The Earl of Carlisle and the Board of Trade, 1779”; in this *Review*, XXII. 334–339.

¹⁵ Donne, *The Correspondence of George III. with Lord North*, II. 283.

Lords,¹⁶ but the extent of Hillsborough's jurisdiction seems never to have been brought into question. That there was jealousy and friction is shown, however, in connection with the appointment of his successor. On his resignation the vacant post was offered to Weymouth, who declined it on the ground that he had opposed the establishment in 1768, and that he thought it not a real secretaryship, because the form of its commission limited its efficiency to the colonies.¹⁷ This is based evidently on the preamble and indicates an informed contemporary interpretation of that preamble. The faction in the ministry opposed to North—Gower, Suffolk, and Rochford—was more than willing to discontinue the office, in which case the direction of the colonies would be given to the Board of Trade and the patronage would be once more in the hands of the southern secretary.¹⁸ The reluctant acceptance of the seals by the Earl of Dartmouth prevented such a return to the old scheme of divided authority. The delimiting, or explanatory, clauses were retained in his commission, but certain changes, suggested by the king himself, were made in matters of administrative detail in order to prevent conflict between the colonial and southern departments.¹⁹ The older secretaries, however, seemed determined to curtail Dartmouth's powers. They particularly denied his right to give orders to the Admiralty and to the secretary at war; these important functions were saved only by the persistence of John Pownall, who was able to find precedents to uphold Dartmouth's claims.²⁰ Ultimately a working agreement was made whereby Dartmouth should direct the movement of troops within the colonies and should give orders to the Admiralty in connection with the return of the troops from them, while all orders to the secretary at war or the Admiralty concerning the sending of troops thither should come from the older departments.²¹ Thus it would appear that very definite attempts were made to interfere with the freedom of action which by right belonged to a *bona fide* secretary

¹⁶ See below.

¹⁷ Walpole, *Last Journals*, I. 127; Knox MSS., *op. cit.*, 256.

¹⁸ Knox MSS., *op. cit.*, p. 256; p. 107, Pownall to Knox, August 1, 1777. Pownall thought both direction and patronage might be given to the Board, but this seems unlikely in view of the wish of Rochford to obtain the appointment to two colonial patent offices which were about to fall in.

¹⁹ George III. to North, Aug. 9, 1772, Donne, *op. cit.*, I. 107. What these changes were does not appear.

²⁰ John Pownall, secretary of the Board of Trade and under-secretary of state. Knox was his colleague in the latter position.

²¹ Public Record Office, St. Pap. Dom., M 1, 26. *Cal. St. P. Home Office*, IV no. 79.

of state, and that it was only by the exercise of considerable adroitness that even routine business was performed by the Colonial Office.

Dartmouth was not the kind of man to carry on such constant bickering as was necessary, and in fact he made little impression either upon the Council or upon the Board of Trade. Pownall complained to his colleague, Knox, that Bamber Gascoyne²² was "minister for America at the board and Lord Suffolk at the council office, all councils for American business being in Lord Gower's absence held by Lord Suffolk. . . . Lord North's blindness, or rather indolence, in respect to the arts that are practised to ruin and disgrace our department, and ultimately himself, is astonishing and unpardonable".²³ Dartmouth was too trustful and lacking in force, North was too good-natured to deal with the aggressive faction in the cabinet. The fact that these two men were step-brothers and had long lived on terms of intimacy did not save the American department from cutting a "most pitiful figure" or prevent Suffolk from getting so much American business in his hands that Pownall complained that William Eden, Suffolk's under-secretary, knew more about the colonies than he did.²⁴ When we remember that these years, 1772-1775, were the most critical in all the history of the American colonies, we can understand how important were these internal divisions and jealousies.

The resignation of Dartmouth in November, 1775, due to his unwillingness to direct hostilities against the colonies then in actual revolt, furnished an opportunity for the ambitious Suffolk to increase his power in the cabinet. The government was but a patched-up affair: Gower was the leader of the old Bedford group, Suffolk of the disrupted Grenvillites, and both hoped to displace the premier. The changes made in 1775 were designed to satisfy all factions: Dartmouth took the Privy Seal, Rochford gave way to Weymouth, a Bedfordite, and Lord George Germain, a Grenvillite, succeeded Dartmouth. The accession of Germain added strength, or at least aggressiveness, to the government; his military experience, unfortunate as it had been, was presumed to fit him to direct the campaign in America, and his ability as a speaker aided the government in the Commons, where its leadership was lamentably weak. It was Suffolk, however, who hoped to profit most from Germain's appointment: without giving up any of the business he had usurped and without recognizing Germain as a secretary of state with full power,

²² A member of the Board of Trade.

²³ Knox MSS., *op. cit.*, p. 110, July 23, 1773, Pownall to Knox.

²⁴ *Ibid.*, p. 122, Oct. 10, 1775, Pownall to Knox.

he would gain a colleague who would support him in his intrigues against North.

Suffolk's plan miscarried. The commission issued to Hillsborough and Dartmouth, as we have seen, was different from the commissions to the other secretaries of state only in the matter of the preamble; so long as this was retained, however, the interpretation might be made that this commission created a new office; if this were true, Germain, as a commoner, could not, according to the Place Acts of Anne, hold such an office. Hillsborough and Dartmouth as peers had naturally not been affected by this consideration. The only recourse, therefore, was to issue a warrant and commission in such form as those issued to the other secretaries of state; in other words, the preamble should be omitted. Were this done, then certainly one of the main arguments in favor of a distinction between the powers of the old and new departments would be gone—and Suffolk would gain nothing.

The first thought seemed to be to fall back upon the argument that a third secretary of state could not be legally created. In the Auckland MSS., in the papers dealing with this affair and among the letters of Eden and Wedderburn, there is an unsigned and undated summary of a "debate which arose at the end of the session in which Lord H[illsborough] was appointed secretary".²⁵ The arguments were wholly against the legality or expediency of a third secretary of state. Such an office is illegal, it was said, because (1) of the custom of the constitution, there having been only two secretaries since the time of Henry VIII., the exception of a Scottish secretary not being germane,²⁶ (2) of the provisions of the Regency Act, which provided for only two secretaries and thus implied the impossibility of a third, (3) of the Place Acts of Anne, and (4) if a third secretaryship of state could be created, so could a fourth and a fifth, and, likewise, all the great offices of state might be multiplied; furthermore such an office is inexpedient because of "the impropriety of making America a distinct department, separating it still more from Great Britain by erecting a peculiar office for affairs there"; it is improper because of the Board of Trade, which

could not be an office of government, for the government of the colonies must be carried on by the king in council; there could not be two

²⁵ British Museum, Add. MSS. 34,412, ff. 393-395. This manuscript is undoubtedly in the handwriting of Wedderburn. If he believed in the validity of the case as here presented, he did not let that fact influence his conduct as will soon appear.

²⁶ The manuscript points out that after the debate was over, it was learned that there was a third secretary in the reign of Edward VI.—a point in favor of the constitutionality.

councils, and it was more improper to make the first commissioner of trade a secretary for the colonies than any other of the king's servants, because having a board to support him, he would naturally assume to decide where his province only was to report,²⁷ and must, by degrees raise, if he could, his board above the council and hold himself without control in his new made department.

Although this purports to be a summary of a debate held some nine years before, nevertheless it must have been the basis upon which Suffolk and his friends hoped to rest their case.

When the time came for Germain, along with Weymouth (the successor of Rochford), to take his oath of office, the question in respect both of the legality of his office and the form of his commission was still unsettled. The story at this point may best be told in the words of William Knox:

A difficulty in giving Lord George Germain such a commission, 'twas apprehended, would be made by Lord Weymouth and Lord Suffolk. Lord Suffolk, we supposed, would acquiesce for the sake of his plan and with him the Solicitor General would concur. The Attorney General²⁸ and Lord Weymouth were supposed to object together. The King by one of those minute strokes for which he is so eminent, removed all the difficulty. When the Council was met to swear in the new officers, Lord Gower, being Lord President, moved the King, of course, that Lord Weymouth might be sworn Secretary of State. The King replied, "there are two secretaries to be sworn; let them be sworn together", which was done accordingly.²⁹

This decisive action on the part of the king ought to have put a definite end to the whole intrigue. Not so: the commission had to be drawn up in Suffolk's office,³⁰ and thus Suffolk and Eden were given an opportunity for more bickering.

Germain, as was customary, entered upon the duties of his office without waiting for the enrolment of his formal commission, and immediately trouble-makers appeared. Germain's friends, it was alleged, desired "to raise his department"³¹ above the other two,

²⁷ It is interesting to note in this connection the reason for the resignation of Hillsborough as secretary of state. The council refused to adopt the policy recommended by the Board of Trade in connection with the Ohio grants. Hillsborough was, of course, responsible for the proposals of the Board. Thus it was because his policy at the Board rather than his policy as secretary of state was defeated that he resigned.

²⁸ The solicitor general was Wedderburn; the attorney general, Thurlow.

²⁹ Knox MSS., *op. cit.*, p. 256.

³⁰ *Ibid.*, p. 257.

³¹ Add. MSS. 34,412, f. 390, Eden to [Wedderburn], Dec. 16, 1775. Eden seems to have been sincerely worried, for he wrote: ". . . in the meantime I know that, what you cannot know or conceive, if the American department is

while Eden and Suffolk were determined to prevent any such possibility, or even the appearance of an equality among the three departments, by drawing up a "barrier treaty" between Cleveland Row and Whitehall.³² Eden drew up such a "barrier treaty", duplicates of which were to be signed at the top and bottom by the king³³ and were to be sent to each one of the three secretaries; this document was drawn up in the first person as from the king, and recited that orders had been given for a warrant to Germain "in the same form and manner" as for the northern and southern secretaries, but that it was necessary in order to obviate any inconveniences which might arise in the course of business that the form of the warrant and commission should make

no difference with regard to the duties of the third Secretary of State who is always to be considered as separate from the other two; and that the ministers filling the Northern and Southern departments shall in all events be considered . . . as the two principal Secretaries of State at whatever period they may be appointed. And farther, it is my pleasure that my Secretaries for the Northern and Southern departments shall exclusively as heretofore transact all business respecting the interior of Great Britain, or any other parts of my domain, and all other matters which have been executed within the said departments subsequent to Lord Hillsborough and Lord Dartmouth being made Secretaries of State. And it is equally my pleasure that my Secretary of State for the Colonies shall transact all matters in his department in the same manner as has been hitherto done by his predecessors therein.³⁴

This proposed sign-manual instruction was shown to Wedderburn, who had gradually drawn away from Suffolk and had become the to be blended with them in the manner that you wish and propose, it will be the only honorable one of the three; the others will become irksome and inconvenient and will end in being insignificant and disgraceful. . . . Why will not Lord George's advocates *since* he came into office speak out when they counteract those who were his most active friends before he came into office. They intimate that they wish to alter the form of the appointment without changing the functions. 'Be it so', we say, 'let the appointment differ from his predecessors, but let the functions remain the same'. 'No', they say, 'that line is dangerous, and we cannot advise him to be guided by it without misleading him from his honour and his interest'".

³² *Ibid.*, f. 397, Dec. 17, 1775. The colonial department was in Whitehall —Downing street; Suffolk's office was in Cleveland Row.

³³ In other words, this document was in the form of a sign-manual instruction.

³⁴ *Ibid.*, ff. 392-393. This draft is in Eden's hand. He wrote Wedderburn that Suffolk approved it. In so far as this draft throws any light upon the conduct of the colonial department under Hillsborough and Dartmouth, it would appear that neither of these men were regarded as of equal rank or authority with the other secretaries; that the preamble of their commissions was looked upon as definitely limiting their power to the colonies. All the other evidence seems to point in the same direction, and we may therefore conclude that neither Hillsborough nor Dartmouth possessed the full and extensive power of the secretarial seals.

friend and adviser of Germain. Wedderburn not only refused to show Germain this proposal, but said that he would advise him to resign rather than to

submit to an explanation not called for, not attempted on two former occasions, and that can only be proposed . . . to make him submit in the first place to an indignity and afterwards hold the exercise of his office at the discretion of the other offices and at his own risque; for to give as a fixed rule the usage of seven or eight years is only establishing a rule the extent of which is to be disputed in every case and which by the power of two to one will be decided for his office when the act is troublesome, against it when it is unpleasant.³⁵

Eden insisted, nevertheless, that "some barrier treaty must subsist between the departments in the very nature of their establishment", and believed that his scheme, "unless Lord George much misapprehends it", ought to be satisfactory, both because Germain "knows enough of this kind of business to know that some line ought to be drawn", and because "his mind is too honorable not to feel that the terms used in describing that line ought to be general and indefinite that they may be liberally interpreted for the care and advantage of the public service". In the meantime Eden had talked with John Pownall. "If he (Pownall) can have the same success with his principal (Germain) I shall hope to see this silly story put an end to tomorrow", wrote Eden. He was all the more willing to stop his intrigues because of bad news which had just arrived from America, and which made him indisposed to stick at punctilios of office or to do anything for private reasons to "clog and embarrass the wheels of government".³⁶ Evidently Pownall had no success with his chief, because nothing more is heard of this astounding proposal. In fact the commission was duly made out and enrolled, with the preamble left out.³⁷ Germain was, therefore, technically on the same plane with the other secretaries; his commission was the same; his continuance in office as a commoner signified that the colonial secretaryship was not regarded as a *new* office for which, according to the Place Acts, a commoner would be ineligible.³⁸

³⁵ Add. MSS. 34,412, f. 398, Wedderburn to Eden, Dec. 18, 1775.

³⁶ *Ibid.*, f. 397.

³⁷ Public Record Office, Patent Rolls, 16 George III., pt. 2, memb. 4. The patent for Germain's successor, Welbore Ellis—the last colonial secretary of this period—is in the same form: Patent Rolls, 22 George III., memb. 10.

³⁸ Germain had one more skirmish in connection with this whole matter. In 1779 Sir Joseph Mawbey raised the question of Germain's eligibility to sit in the Commons, on the ground that he occupied an office established after October, 1705. The stock arguments were used, to which Germain replied that he had gone into the matter at the time of his appointment, that he had understood that

Although this whole discussion is inconclusive, several things stand out so prominently as to throw some light on the development of the secretariat. In the first place, the query in respect of the constitutionality of a third secretaryship was answered by the mere fact of the creation and continuance of the office. In the second place, it seems certain that Hillsborough and Dartmouth were considered as and acted only as *colonial* secretaries; without the ulterior question being raised as to their general powers, they accepted an informal restriction upon the theoretically all-embracing power of the secretarial seal. In the third place, and most interesting of all, the question arises: what if Eden's barrier treaty had been accepted? The theory of the secretariat which was laid down at the beginning of this paper would have received a rude blow, and one of the main lines of the development of the cabinet might well have been blocked. Although his contention received no recognition in the wording of Burke's bill which disestablished the old colonial secretaryship, Germain was fighting a battle for the future when he insisted that he was not a *third* secretary or a secretary for the *colonies*, but one of his Majesty's principal secretaries of state.

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his office was not a new one, and that he had complied with the Place Acts by standing for re-election. The house divided, but only one member supported Mawbey and his second. *Part. Hist.*, XX. 250-266.